

TO: Members of City Council, City of Beachwood

FROM: Carole S. Rendon
Carrie Valdez

DATE: October 30, 2019

SUBJECT: Summary Report Relating to Independent Investigation for City Council, City of Beachwood

I. Executive Summary

This report is intended to provide a summary of the independent investigation that the City of Beachwood (“the City”) appointed the law firm of Baker & Hostetler LLP (“Baker”) to complete regarding allegations involving the conduct of Mayor Martin S. Horwitz. (“Mayor Horwitz”).

The allegations involving Mayor Horwitz were reported by City employees, and, in its responsibility to administer and comply with established City policies and applicable law, the City undertook an independent investigation into the alleged misconduct.

After a comprehensive investigation, the allegations fell into three basic categories:

- (1) allegations that were substantiated;
- (2) allegations that were deemed highly credible; and
- (3) allegations that could not be substantiated.

Baker’s investigation produced sufficient evidence to substantiate and/or deem highly credible 14 out of the 24 allegations we received to a degree that we believe, at minimum, is inconsistent with the City’s expectations regarding appropriate workplace conduct. Not every specific allegation that Baker investigated was substantiated. The allegations that were substantiated or deemed highly credible were statements made to or in the presence of multiple individuals over a period

of nearly 18 months; demonstrating a pattern of conduct by Mayor Horwitz, as opposed to an isolated incident. No allegation involved inappropriate physical contact by the Mayor. Baker also did not uncover evidence that any other person at the City participated in or condoned Mayor Horwitz's alleged misconduct.

II. The Independent Investigation

A. Overview and Independence

On August 23, 2019, the City introduced Ordinance 2019-95, engaging Baker & Hostetler LLP and appointing Carole Rendon as special counsel to conduct an independent investigation relating to matters involving Mayor Horwitz that had been brought to the City's attention through complaints raised by City employees. Ordinance 2019-95 became effective on August 30, 2019.

The investigation was not predicated on a regulatory, legal, media or other external complaint or inquiry. Rather, the independent investigation was triggered through internal concerns and an effort by the City to undertake best practices by following up on such internal allegations. Baker, which has not done any work for the City or Mayor Horwitz in the recent past, was retained to conduct that factual investigation and report its independent findings to City Council.

The independent investigation commenced immediately following the August 30 Ordinance effective date and was active for approximately eight weeks. During that period, Baker was afforded the full cooperation of the City and its employees, including Mayor Horwitz. At no point was Baker's investigation limited or obstructed in any manner whatsoever. Baker was free to, and did, follow the facts wherever they led.

Baker undertook every reasonable effort to preserve the confidentiality of the investigation in order to protect the identities of the individuals interviewed as part of the investigation, to maximize the effectiveness of the investigation and to minimize the opportunity for interference with the investigation or with the information provided by any witness. This report does not identify the individuals who provided information as part of the investigation. These individuals have a right to privacy and the investigators want to ensure that no one retaliates against them for their participation in the investigation.

B. Summary of Investigative Steps and Conclusion of Investigation

The investigation consisted broadly of: (1) the collection and review of City records and (2) a series of witness interviews.

Specifically, the Baker team collected and reviewed a number of documents, including but not limited to emails, the City's Personnel Policy Manual, relevant City Ordinances, and other records. In addition to Mayor Horwitz, the Baker team interviewed eleven current and former City employees, male and female, and across different departments, with knowledge of the allegations and/or regular interactions with Mayor Horwitz. Most of the interviews lasted at least an hour, and some witnesses were interviewed more than once. In order to preserve the integrity and confidentiality of the investigation, the Baker team conducted some of the witness interviews in a private location away from City Hall.

Mayor Horwitz was aware of the Ordinance and of the investigation. Both before and at the outset of his interview, the Baker team formally advised Mayor Horwitz of the nature of the investigation. Mayor Horwitz was interviewed at length, and he submitted documents that were considered as part of the investigation. Baker interviewed all of the individuals Mayor Horwitz recommended be interviewed as part of the investigation. Mayor Horwitz addressed many of the allegations during his interview, later through his counsel, and in a statement released to the media on October 25, 2019.

On Friday, October 4, 2019, the Baker team provided an oral report to the members of City Council, except for Mayor Horwitz. Following its presentation to members of City Council, Baker reported its findings and conclusions to counsel retained by Mayor Horwitz.

The Baker team is satisfied that its independent investigation into the allegations is complete, that it received the full cooperation of the City, and that no other information needs to be gathered and no additional interviews need to be conducted.

III. Allegations and Findings

The allegations regarding Mayor Horwitz's conduct fell into three categories: (1) allegations that were substantiated; (2) allegations that were deemed highly credible; and (3) allegations that could not be substantiated.

Seven out of the eleven individuals who were interviewed as part of the investigation (excluding Mayor Horwitz) were either subjected to, witnessed, or had received a report of inappropriate behavior by the Mayor. Some of these individuals were highly offended by the statements allegedly made by Mayor Horwitz, while others reported that they assumed he was joking and perceived the alleged statements as, at worst, inappropriate jokes.

The investigators found the witnesses to be credible. Out of concern regarding the propriety of his conduct, several of the witnesses had taken contemporaneous notes of the Mayor's statements. Others had reported the statements to colleagues in real time. In such instances, the accuracy and credibility of the witnesses' recollection of the Mayor's statements was enhanced by those efforts.

During his interview, Mayor Horwitz admitted that he made or likely may have made several of the statements that were reported to the investigators. Mayor Horwitz asserted that he intended these statements as jokes, admitted that he has an odd sense of humor, and said that he uses his sense of humor as a defense mechanism when he is anxious or nervous. The Mayor acknowledged that he attended a city-wide mandatory sexual harassment training in the Spring of 2018 and that, as a result of that training, he knows that the question "is not what I think, it is how the comment is perceived." Although contradicted by several other witnesses, the Mayor claimed that no one had ever approached him or told him that anything he had said or done was inappropriate or made others uncomfortable and, as a result, he had no way of knowing how his comments were perceived by others.

The investigation produced sufficient evidence to substantiate or deem highly credible 14 out of the 24 allegations to a degree that, we believe, is inconsistent with the City's expectations regarding appropriate workplace conduct.

A. Allegations that were substantiated

The allegations in this category were substantiated either because they were admitted by Mayor Horwitz or because there were multiple witnesses present who saw or heard the allegedly inappropriate conduct.

Mayor Horwitz admitted that during a meeting attended by several City employees from different departments, he said to a visibly pregnant City employee, "You've really let yourself go." During his interview, the Mayor stated that he regretted that comment and realized that "it was not a real smart thing to say." In addition to the Mayor, a number of City employees reported this comment during the investigation.

When discussing whether his personal computer would be a matter of public record, Mayor Horwitz allegedly asked whether the pornography on his computer was a public record that could be searched. While Mayor Horwitz did not specifically recall making this statement, he admitted that it was possible that he would have said something like that and that, if he did, it would have been in an effort to be funny since anyone who knows him knows that he is a dull person who does not drink, do drugs, or watch pornography.

Mayor Horwitz allegedly told a City employee that his wife was going out of town and that he was excited for the next four days of "hookers and heroin;" but that he was only kidding because a guy his age would only last a short period of time before needing medication. Mayor Horwitz recalled his wife's trip as described by the City employee and agreed that he may have made this statement as a joke, and that it "sounded like something stupid enough that [he] would have said."

Mayor Horwitz allegedly said, "What is this look? I like this look," to a City employee who had styled herself differently for work on that occasion. The individual perceived this comment to be made in a sexually inappropriate manner. Mayor Horwitz acknowledged that it was possible that he said something like that, but he hoped that if he made a comment like that, the person would know that it was not a pickup line and was not intended for a sexual reason.

Mayor Horwitz allegedly attended Mayor's Court with a personal family friend and told court personnel that he needed to be present to supervise and ensure that the matter was appropriately resolved. The Mayor was later counseled and advised that his presence at Mayor's Court and what he said to court personnel was not appropriate and could jeopardize the impartiality of the court. Mayor Horwitz acknowledged this incident and the subsequent counseling and explained that he was just trying to show off that he had a whole Mayor's Court. Mayor Horwitz emphasized that he was not trying to receive any personal favors and had told court personnel as much, and that he did not really understand why his conduct was inappropriate.

Mayor Horwitz allegedly often said, "I haven't fired anyone yet today, but maybe I will. You never know." Mayor Horwitz does not recall saying this specifically, but he admitted that he could have said it. The Mayor explained that if he said it, it would have been meant as a joke.

During a City event with several people in attendance, Mayor Horwitz appeared to be peering down at someone with a chest tattoo that was partially showing. When asked what he was doing, Mayor Horwitz allegedly responded, "I'm just trying to see how far down that tattoo goes." This

statement was reported to the investigators by more than one individual who saw the Mayor's conduct and heard the statement. Mayor Horwitz denied the allegation stating, "That would be a red line with me."

B. Allegations deemed highly credible

The following category of allegations were deemed highly credible because they were either heard by a witness who took contemporaneous notes of the statements, or they were heard by a witness and then immediately reported to another City employee who related the incident to investigators in substantially the same way as reported by the witness.

When speaking about two female candidates running for Common Pleas Judge and discussing which he planned to endorse, Mayor Horwitz allegedly told an employee that, "This is the first time I've been between two women before and even though this is a complete fantasy of mine, I don't know who to back." The individual who reported this allegation took contemporaneous notes regarding the incident. Mayor Horwitz denied the allegation during his interview. However, later in the interview, the Mayor referred back to this allegation acknowledging that there were some statements that he could have said as a joke, but this was not one of them. Regarding this allegation, Mayor Horwitz then said to the investigator, "It's a good line. I wish I would have thought of it."

In speaking to an employee about a potential promotion for which that individual was not qualified, Mayor Horwitz allegedly said, "You are like a virgin to this office. I know you're not a virgin, or, maybe you are, or maybe that's none of my business." The individual who reported this allegation took contemporaneous notes regarding the incident. Mayor Horwitz denied the allegation.

Mayor Horwitz allegedly told an employee that if she ever had children, she would be fired. The individual who reported this allegation took contemporaneous notes regarding the incident. Mayor Horwitz denied the allegation.

During a committee meeting where two female City Council members disagreed on a matter, Mayor Horwitz allegedly leaned to the person next to him and said something about a cat fight and then made an orgasm sound. The individual who reported this allegation took contemporaneous notes regarding the incident. Mayor Horwitz denied the allegation.

When discussing new supervisory responsibilities over City employees, Mayor Horwitz allegedly stated, "Now that I'm supervising you, does that mean I can take you home like chattel. I've never had me a manager before." The individual who reported the statement immediately reported it to a colleague, who recalled the statement being reported to them by the witness. The colleague to whom the witness reported the statement recalled that the witness was very upset after the Mayor made this statement. Mayor Horwitz denied the allegation stating, "I don't think I'd even say that to be funny."

Mayor Horwitz allegedly told a City employee that she reminded him of his wife except, "You're taller, thinner and prettier than she is." The individual who reported the statement during the investigation also reported the statement to a colleague immediately after the Mayor said it to her. The witness also stated that she responded to the Mayor when he made the comment and said,

“I’m pretty sure you’re not supposed to be saying things like that to me.” The witness reported that the Mayor responded, “I know. I know,” and kind of shrugged it off. Mayor Horwitz denied the allegation and added that he did not remember anyone ever telling him that he was not supposed to be speaking a certain way.

After the embryo breach at University Hospital, Mayor Horwitz and a City employee allegedly discussed how to handle inquiries from concerned citizens. Mayor Horwitz allegedly said, “This gets into the abortion discussion because of how embryos are fertilized; but we don’t need to get into a sex discussion right now, unless you want to.” The individual who reported this allegation took contemporaneous notes regarding the incident. Mayor Horwitz denied the allegation.

C. Allegations that could not be corroborated

The following allegations could not be corroborated because Mayor Horwitz denied them and there were no other witnesses with whom we were able to speak and/or the witness did not take contemporaneous notes or report the statement in real time to another individual.

When discussing whether someone should be elevated to a higher job grade, Mayor Horwitz allegedly asked the individual, “Aren’t you a 10?” The individual responded that she was not and identified her actual job grade, to which the Mayor responded, “Are you sure you aren’t a 10?” The person who reported this allegation perceived the Mayor’s tone as sexual.

Mayor Horwitz signed a piece of correspondence and gave it to an individual who discovered a typographical error in the letter after the Mayor already had signed. The individual corrected the error and brought it back to the Mayor to be re-signed. When the individual returned for the signature, Mayor Horwitz allegedly said, “I should punish you.” The person who reported this allegation perceived the Mayor’s tone as sexual.

Mayor Horwitz was discussing an employee’s promotion and allegedly asked the employee whether the employee was going to buy him lunch now that the employee had been promoted. The employee responded that he/she would not take him to lunch because the Mayor probably made more money than the employee. Mayor Horwitz allegedly responded, “You sound like a Jew.” The employee perceived the statement as an attempt at humor.

Mayor Horwitz allegedly bragged to someone about being the Mayor who, “hired the first colored firefighter” in Beachwood.

In one of the first meetings post-election to which the Mayor was a half an hour late, Mayor Horwitz allegedly entered the meeting and said, “Sorry I’m late. I did one too many lines of cocaine this morning.”

The Mayor allegedly asked more than once, “You know the TV in the Mayor’s office, can I get Netflix on that?” Mayor Horwitz unequivocally denied that allegation but remembers asking Beachwood’s IT personnel if Netflix was accessible on the TV because the computer was accessible on the TV. The employee who reported this allegation viewed it as related to a subsequent statement by Mayor Horwitz that, “I don’t wear pants when I’m home. That makes it easier when you’re watching porn.”

During a meeting, a female City employee made a suggestion and the Mayor allegedly responded, “Wow, you’re not only good looking, you’re actually smart too.” He then allegedly added, “You should come and work in the Mayor’s office with me.”

The Mayor was on scene at a significant house fire. An individual allegedly told the Mayor that they were lucky the fire was during the day or they probably would have been pulling bodies out of the house. Mayor Horwitz allegedly responded, “That’s only if you could find them.” The individual asked the Mayor what he meant by that, and the Mayor allegedly responded, “You know, they’re black [referring to the people who lived at the house], when they burn up, they’re really hard to find in fires.”

A City employee had showed Mayor Horwitz and other City employees pictures from a vacation with the employee’s adult children, and the Mayor allegedly said to another employee, “Did you see the way those kids were dressed? They were going there to do Vegas, not to see Vegas.”

The Mayor allegedly often asked at least one employee how old they were, when they planned to retire, and told them it was time to retire. Mayor Horwitz denied asking any employee their age or telling anyone that they were too old and should retire. He acknowledged that he may have asked employees who had been retired and rehired how much longer they planned on working.

IV. Applicable Human Resources and Legal Principles

The City’s Personnel Policy Manual contains a Statement of Commitment and establishes expectations of elected officials related to appropriate workplace conduct and a commitment to an environment free from harassment. *See* City of Beachwood, Personnel Policy Manual, Section 5.2.

Relevant statutes provide that improper comments can amount to a hostile work environment if they are severe or pervasive enough to create a work environment that a reasonable person would consider intimidating, hostile, or abusive. A determination of whether conduct is severe or pervasive enough to violate the law is very fact specific.

V. Conclusion

The above summary accurately sets forth the substance of Baker’s independent investigation for the City of Beachwood and our conclusions based upon that investigation.

This report is intended only as an overview of the investigation that Baker conducted. It does not seek to describe every fact or conclusion. Baker does not believe that any further investigation is necessary.